

(1989) 03 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 2255 of 1982

Suresh Bhandekar and others

APPELLANT

Vs

Maharashtra State Electricity Board and others

RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Maharashtra State Electricity Board (Classifications and Recruitment) Regulations,
1961 — Regulation 21, 22, 38, 5, 8

Citation : (1989) 3 BomCR 420 : (1989) 91 BOMLR 679 : (1990) 1 LLJ 1

Hon'ble Judges : H.D. Patel, J; Dhabe, J

Bench : Division Bench

Judgement

Dhabe, J.—The petitioners Nos. 1 to 13 have challenged in this petition the promotion of the respondents 3 to 29 on officiating basis from the posts of Assistant Shift Engineer to the post of the Assistant Superintendent.

Briefly the facts are that the petitioner are all degree holders in Electrical/ Mechanical Engineering of the recognised Universities. They were all originally appointed as Chargeman Grade-I by an order dated 10th January 1977 in the service of the respondent No. 1 - Maharashtra State Electricity Board - (for short the Board) and posted at Thermal Power Station, Koradi. By an order dated October 20, 1978, they were promoted on ad hoc basis to the posts of the Assistant Shift Engineers in which posts they were given officiating promotions later on by an order dated October 23, 1980. The service history of the petitioners is given in Schedule I to the petition. It is not in dispute that as per Regulations 5 and 8 of the Maharashtra State Electricity Board (Classifications and Recruitment) Regulations, 1961 (for short the Recruitment Regulations) the posts of the Assistant Shift Engineers can be filled by departmental promotion from the cadre of the Chargeman Grade-I and that for the said promotion, the degree holders require 3 years" experience while the diploma holders require 6 years" experience in the post of Chargeman Grade I.

2. It is also not in dispute that the next promotion on the generation side from the post of Assistant Shift Engineer is to the post of Assistant Superintendent which during the relevant time carried the pay scale of Rs. 1275-65-2120. It may be seen that the promotion to the post of the Assistant Superintendent is made from the next below post of the Assistant Shift Engineer. For being eligible for promotion in the post of the Assistant Superintendent, the necessary qualifications prescribed in Schedule A-6 read with Regulations 5 and 8 of the Recruitment Regulations are degree in Electrical/Mechanical Engineering with 5 years" experience and the diploma in Electrical/Mechanical Engineering with 10 years" experience in Planning, Design. Preparing Specifications, Drawing, Estimates etc. Executions, Construction, Testing and Commissioning, Operation and Maintenance connected with power stations of which 3 years should have been spent in a position of responsibility.

3. It is the case of the petitioners that the respondents 3 to 29 are all diploma holder and that they joined the service of the Board between the years 1973 to 1976, as shown in Schedule II to the petition. It appears that the respondent 3 to 29 were later on promoted to the posts of the Assistant Shift Engineers like the petitioners-vide orders dated February 9, 1982. The respondents 3 to 29, who were then working as Assistant Shift Engineers, were further promoted along with others to officiate in the post of Assistant Superintendent. It is the grievance of the petitioners that since the respondents 3 to 29 were originally appointed during the period from 1973 to 1976, none of them had an experience of 10 years prescribed for the diploma holders for promotion to the post of the Assistant Superintendent under the Regulations of the Board referred to above.

4. It is necessary to notice at this stage that previously the post of the Assistant Superintendent was a selection post filled in on the basis of the criteria of merit. However, by the Resolution No. 1347 dated January 6, 1982, passed by the Board, the post was declared a non-selection post and was to be filled in on the basis of the principle of seniority subject to fitness. Accordingly, the correction Slip No. 141 dated June 5, 1982 was issued to G.S.O 112 dated February 12, 1962, which is annexed to this writ petition as Annexure-B by the petitioners. The petitioners have urged that since the correction slip was issued on June 5, 1982 i.e. subsequent to the order of promotion of the respondents 3 to 29 dated February 9, 1982, the post of the Assistant Superintendent should have been treated as a selection post on the date of promotion of the respondent 3 to 29 i.e. on February 9, 1982 and should have been filled in solely on the basis of the criteria of merit at that time. It is, however the submission on behalf of the Board that the Resolution by which the said post was converted into a non-selection post was itself passed on January 6, 1982 and, therefore, on the date of promotion of the respondents 3 to 29 on February 9, 1982, the said posts were non-selection posts and had, therefore, to be filled in on basis of the criteria of seniority-cum-fitness. In answer to the grievance of the petitioners that the respondent 3 to 29 were not eligible for promotion to the posts of the Assistant Superintendent. Since they had not put in 10 years of service as

prescribed under Schedule A-6 of the Recruitment Regulations, the submission on behalf of the Board is that the said qualification as regards the experience was relaxed in their cases by the Competent Authority by virtue of the power given to it under Note 2. Regulation 38 read with Regulation 21 of the Recruitment Regulations.

5. It is clear the return filed by the Board that the cases of 170 candidates for promotion to the post of the Assistant Superintendent as per the seniority list of the Assistant Shift Engineers which included the cases of the petitioners, were placed before the Competent Selection Committee of the Board. However, looking to the vacancy position, the Competent Selection Committee of the Board considered the cases of the Assistant Shift Engineers upto S. No. 140 in the seniority list out of which 125 candidates were found suitable by it on the basis of the principles laid down in sub-clauses (a) to (c) of clause A of Regulation 22. It is further clear from the return of the Board that since the petitioners were belows S. No. 140 in the seniority list, their cases were not considered by the Competent Selection Committee. It is, however, not in dispute that later on the petitioners were all promoted to the posts of the Assistant Superintendent. The main benefit that they would thus get if they succeed in this petition is of the readjustment of their seniority vis-a-vis the respondents 3 to 29 by getting deemed date of promotion from the dates the said respondents were promoted and other benefits arising therefrom. It is thus on the basis of the above facts that the contentions raised by the petitioners have to be considered in the instant writ petition.

6. In the view which we have taken in the instant writ petition, it is not necessary for us to decide the question whether the post of the Assistant Superintendent was a selection post or a non-selection post on the date of the promotion of the respondents 3 to 29 in the said post. Therefore, proceedings in the instant writ petition on the footing that the post of the Assistant Superintendent was a non-selection post as urged on behalf of the respondent Board, two questions arises for consideration in the instant writ petition. The first questions is whether the selection is made by the Competent Selection Committee of the Board in accordance with the Recruitment Regulations of the Board for appointment of the post of Assistant Superintendent. The said Recruitment Regulations is contained in Schedule A-6 in which in the generation wing the post of the Assistant Superintendent in pay group "A" is at S. No. 7. The other questions which arises for consideration is whether the relaxation of qualifications of the respondents 3 to 29 is legal, proper and in accordance with the Recruitment Regulations of the Board.

7. It may be seen that the Board has acted on the basis of the seniority list of the Assistant Shift Engineers and has gone strictly by the placement in the said seniority list of the Assistant Shift Engineer in making promotions to the post of the Assistant Superintendents because according to it, the post of the Assistant Superintendent is to be filled in on the basis of the principle of seniority-cum-

fitness, being a non-selection post. As regards the question of relaxation of qualifications of the respondents 3 to 29 according to the respondent Board, as per the Note No. 2 to Regulation 38 of the Recruitment Regulations, the Technical Members (Gen. O. and M.) was the competent authority to relax the qualification about experience and that he relaxed the same before the respondent 3 to 29 were promoted to the post of the Assistant Superintendent. It may be stated that during the hearing of this writ petition, the respondent Board placed on record the relevant minutes of the meetings of the Selection Committee dated January 19, 1982 and January 22, 1982 held for selecting the Assistant Shift Engineering for departmental promotion to the post of the Assistant Superintendent. It is as per the aforesaid selection made by the aforesaid Competent Selection Committee that the respondents 3 to 29 were promoted after their qualification as regard to experience was relaxed by the Technical Members (Gen. O. and M.) as shown in the said minutes.

8. It is contended on behalf of the petitioners that the promotion to the post of the Assistant Superintendent from the lower post of the Assistant Shift Engineer was as per its recruitment rule contained in Schedule A-6 read with Regulations 5 and 8 of the Recruitment Regulations from two sources viz. (i) Degree holders with 6 years experience and (ii) Diploma holders with 10 years experience. The submission, therefore, on behalf of the petitioners is that the seniority list of the post of the Assistant Shift Engineers could not have been straightway followed by the Competent Selection Committee in making departmental promotions to the post of the Assistant Superintendent by applying the test of seniority-cum-fitness in the said seniority list. What is urged is that before making promotions to the post of the Assistant superintendent and before applying the test of seniority-cum-fitness, the Board or its Competent Selection Committee should have prepared a list according to the Seniority of the Assistant Shift Engineers who were eligible for promotion to the post of Assistant Superintendent, which would mean that, according to the petitioners, such a list could be of persons who were degree holders with 6 years experience and the diploma holders with 10 years experience. It is from amongst the aforesaid list of the Assistant Shift Engineers that according to the petitioners, the promotions should have been given on the basis of the criteria of seniority-cum-fitness which is envisaged in Regulations 22 of the Recruitment Regulations of the Board. In our view, the above contention raised on behalf of the petitioners is well-founded.

9. Before applying the criteria of seniority-cum-fitness, what has to be first seen is whether the candidate concerned is eligible under the recruitment rules for being appointed in the post of the Assistant Superintendent. If the eligibility of the candidate depends upon the qualifications and experience he must satisfy the said eligibility criteria before he can be considered for promotion to the post of the Assistant Superintendent. If the general seniority list of the Assistant Shift Engineers is followed, as has been done by the Competent Selection Committee in the instant case in making promotions to the post of the Assistant Superintendent on the basis of the criteria of seniority-cum-fitness, it would

result in considering the claims of such Assistant Shift Engineers who although not eligible under the Recruitment Rules for promotion to the post of the Assistant Superintendent, rank higher in seniority than those who are eligible for promotion to the said post. It may be seen that since for degree holders the minimum experience required for promotion to the post of Assistant Superintendent is six years, whereas for the diploma holders the experience required is of 10 years, a diploma holder although he does not possess 10 years minimum experience which is requisite for promotion to the post of Assistant Superintendent can rank higher in seniority in the post of Assistant Shift Engineer than the degree holder who needs and has only six years experience for promotion to the post of the Assistant Superintendent.

10. The arbitrary result, therefore of following straightway the seniority list of the Assistant Shift Engineer would be that the claims of such diploma holders who are shown in the seniority list but do not possess the requisite experience of 10 years would be considered for promotion to the post of the Assistant Superintendent. Whereas the degree holder who rank below them in the seniority list but possess the requisite experience of six years would not be considered for promotion to the post of Assistant Superintendent. This arbitrary result would be violative of Articles 14 and 16 of the Constitution of India. We are supported in this view by the decision of the Supreme Court in the case of R. Prabha Devi and Others Vs. Government of India, through Secretary, Ministry of Personnel and Training, Administrative Reforms and Others,

11. It is, however, urged on behalf of the Board that the Seniority list of the Assistant Shift Engineers can be followed as it is because there is a power of relaxation of the qualifications conferred upon the competent authority under Note of 2 of the Regulation 38 of the Recruitment Regulations under which it can exercise the said power of relaxation upon the recommendations of the Competent Selection Committee which is empowered under Regulations 21 of the Recruitment Regulations to recommend relaxation of qualifications. As regard the question of the power of relaxation of the qualification under the aforesaid Regulations, we shall consider the said question when we consider the second question of relaxation of the qualifications in the instant case. However, even assuming that there is a power of relaxation, in our view, the relaxation of qualifications cannot be and is not a normal rule but it is in exceptional cases that the qualifications can be relaxed by the Competent Authority on the basis of the recommendation of the Competent Selection Committee. What is necessary to be done as a normal rule to arrange a list according to the seniority of the eligible persons from the cadre of Assistant Shift Engineers for departmental promotion to the post of the Assistant Superintendent and then make selection for promotion to the said post from amongst the eligible candidates on the basis on the criteria of seniority-cum-fitness. It is only if a case of a candidate of an exceptional or outstanding merit deserving promotion to the post of the Assistant Superintendent is forwarded to the Competent Selection Committee that the Competent Selection Committee can consider the case of such a candidate and

can recommend the relaxation of his age, qualification etc.

12. The procedure followed by the Competent Selection Committee in considering the cases of the Assistant Shift Engineers as per their seniority list upto S. No. 140 in the said list for making departmental promotions to the post of the Assistant Superintendents and then excluding from consideration the petitioners who were eligible but had been in the seniority list placed below S. No. 140 was thus illegal and improper, being contrary to the Recruitment Regulations prescribing eligibility criteria for promotion to the post of the Assistant Superintendent as well as the mandate of Articles 14 and 16 of the Constitution of India. As we shall presently show, it is because of this erroneous approach in making selection for departmental promotion to the post of the Assistant Superintendent that the Competent Selection Committee has mechanically made selection of the respondents 3 to 29 subject to the relaxation by the Competent authority

13. Turning now to the second question of relaxation of the qualifications, it may be seen that the power to recommend relaxation of the qualifications is conferred upon the Selection Committee under Regulation 21 which is as follows :

"21. The Selection Committee may, besides selecting and recommending candidates, also recommend in deserving case grant of higher starting pay, condonation of physical defect and/or relaxation of age limit and educational or other qualifications."

It may then be seen that as per Note 2 to Regulations 38 of the Recruitment Regulations, the competent authority can relax the qualifications on the recommendation from the Competent Selection Committee. The said Note No. 2 below the Regulation 38 of the Recruitment Regulations is produced below for ready reference :

Note 2 below Regulation 38 :

"Chairman shall be the Competent Authority to relax on the recommendations of the Competent Staff Selection Panel, any of the conditions specified in the above Regulations in case of appointments to be made to the posts filling in of which is within the purview of authorities lower than the Board".

14. Reliance is placed upon the above Regulations on behalf of the Board in order to support its contention that there is a power in the Competent Authority to relax the qualifications and, therefore, the promotions of the respondents 3 to 29 are made by relaxation of the qualifications of the minimum experience on the recommendations in that regard of the Competent Selection Committee. Before considering the questions of the power of relaxations under the aforesaid Regulations, we may also refer to the Regulation 8 and Regulations 36 of the Recruitment Regulations. They are as follows :

"8. Subject to such modification as the Board may decide, the minimum qualifications and/or experience required for the various categories of posts shall

be as shown in Schedule "A.""

Regulations 36 :

"36. When a post is being filled by departmental promotion, the Competent Authority may relax the academic qualifications if the departmental candidate to be appointed is otherwise suitable and qualified by reason of adequate experience and/or by having passed the prescribed departmental examinations."

15. Regulations 8 emphasises that except for the modifications as the Board may decide the minimum qualifications and/or experience required for the various categories of the posts shall be as shown in Schedule "A". Regulations 36 provides that when the posts are being filled in by departmental promotion, the Competent Authority can relax the academic qualifications if the departmental candidates to be appointed is otherwise suitable and qualified by reason of adequate experience and/or by having passed the prescribed departmental examinations. It is thus clear from Regulation 36 that the Competent Authority cannot relax the qualifications of the minimum experience in the case of departmental promotion.

16. It may be seen that the question of the power of relaxation under their Recruitment Regulations is considered by this Court in the case of Maharashtra State Electricity Board Engineers' Association, Nagpur Vs. Maharashtra State Electricity Board, in the context of the question as to whether the appointment in the post of Executive Engineer made by relaxation of the minimum experience prescribed in the advertisement issued for inviting applications for appointment in the said post but which advertisement did not contain a clause for relaxation of the qualifications for which reason certain departmental candidates did not even apply for the said post was illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. After considering the scheme of the above and the other relevant Regulations in the Recruitment Regulations, this Court held in pp. 208-209 of its judgment in the above cases that the power to modify the minimum qualifications in the matter of age, education or experience is conferred under Regulations 8 only upon the Board which is the supreme authority in the matter of employment and, therefore, it observed that it failed to see how such a power can be claimed for the selection committee. It was further held that at any rate, Regulations 8 made a distinction between qualifications and experience and, therefore, under Regulation 21, it was not permissible for the Competent Selection Committee to recommend relaxation of the requirement of the minimum experience in the case of any candidate while filling the post by direct recruitment. In taking this view, this court drew assistance from Regulation 36 which does not empower the Competent Authority to relax their requirement of minimum experience prescribed for various posts while filling them by departmental promotion. It may be seen that the instant case is on a stronger footing than the above case as it is a case according to the Board of departmental promotions in which in view of Regulation 36 it is not permissible for the Board to relax the requirement of minimum experience prescribed for

promotions to the post of the Assistant Superintendent.

17. It is also pertinent to note the observations of this Court in p. 209 of the above judgment. This Court observed that Regulations 8 and Regulations 21 cannot operate simultaneously unless the Board, which is the only authority entitled to modify the requirements of minimum qualifications and experience, consciously exercises its power under Regulations 8, and proclaims in the advertisement calling applications for a particular post that the minimum requirements are liable to be relaxed or condoned in suitable cases. It is thus clear that it is not permissible for the Competent Selection Committee to recommend relaxation of the requirement of minimum experience under Regulations 21 and for the competent authority as per Note 2 to Regulations 38 to act upon it as held by this Court in the above case. The matter is beyond doubt so far as the departmental promotion is concerned in view of Regulations 36 which permits relaxations of academic qualifications only. The relaxations of the requirement of minimum experience in making promotions of the respondents 3 to 29 is, therefore, illegal and contrary to the Recruitment Regulations. However, it is not necessary to set aside the promotions of the respondents 3 to 39 on this ground as they have in the first place after their promotions put in the requisite experience by now by which their promotion would stand regulated (see in this regard *Ram Sarup Vs. State of Haryana and Others*, and secondly because the petitioners are also later on promoted and the only question as pointed out by us in the instant writ petition is of giving them deemed date of promotion from this date on which the respondents 3 to 29 were promoted.

18. It may be seen that even assuming that there is power in the Competent Selection Committee to recommend relaxation of the qualifications under Regulation 21 and the power in the Competent Authority under Note 2 to Regulation 38 to relax the same, the said power of relaxation is exercised in the instant case mechanically without application of mind. It is clear from reading the above quoted Regulations 21 that the Selection Committee can recommend relaxations of the qualifications by conscious application of its mind and not in a routine or mechanical manner as it is clear that such recommendation can be made only in "deserving cases". Relaxation of the qualifications in our view is thus in exceptional case, say, for instance, in a case when the candidate has exceptionally high educational qualifications but does not possess the minimum requisite experience and not as a matter of course because if such a meaning is given to the aforesaid Regulation 21, the rule of prescription of minimum experience would become redundant. The exercise of power of relaxation would thus become arbitrary and violative of Articles 14 to 16 of the Constitution of India as it would then obliterate the class carved out by the eligibility criteria laid down under the Recruitment Regulations for appointment and/or promotion to the post of the Assistant Superintendent. It is, therefore, also necessary even for the competent authority vested with the power to relax the qualification on the basis of the recommendations of the Selection Committee to exercise the said

power of relaxation in deserving case and not mechanically.

19. That there is no conscious applications of mind by the Selection Committee to the question of the relaxation of qualification in the instant case is clear from the fact that the Selection Committee has approached the question on the basis of the seniority list of the Assistant Shift Engineers, by considering the cases of the persons from S. Nos 1 to 140 and selecting 125 persons out of them subject to the relaxation of the condition of experience in the cases of most of them in their favour by the Competent Authority. The Selection Committee has not itself at all stated or given reasons as to why the condition of experience should be relaxed in favour of persons selected by it including the respondents 3 to 29 who did not, according to it, fulfill the condition of experience laid down under the recruitment rule. On the contrary, it left the question of relaxation to the Competent Authority thus abdicating its duty to recommend relaxation of qualifications in deserving cases as provided in Regulation 21 of the Recruitment Regulations on the basis of which the Competent Authority has to act in granting relaxation as provided in Note 2 of the Regulation 38 of the Recruitment Regulations.

20. We may refer to Regulation 22 of the Recruitment Regulations relating to the principles to be followed in making departmental promotions as the said Regulation can be a guide or be a assistance to illustrate or highlight the "deserving cases" in which the relaxation of qualifications can be recommended by the selection committee or can be granted by the competent authority. The said regulations 22 is, therefore, reproduced below for ready reference :

"22. In the case of departmental promotions of posts other than key posts such as Heads of Departments and those declared as "selections posts", persons who are seniormost in the seniority list will ordinarily be considered for selection. The following principles shall normally be followed in making departmental promotions :

A (a) No employee shall be promoted to a higher post unless his record shows that he possesses the necessary positive qualifications for the higher post such as personality, professional qualifications, initiative, strength of character and readiness to assume individual responsibility;

(b) No employees who possesses the positive qualifications referred to in (a) above shall be passed over by a person junior to him unless the latter has, in addition, exceptional ability or qualifications :

(c) In assessing the merits of employees on comparative basis for the purpose of principles (a) and (b) above, the ability, energy, initiative, integrity, sense of responsibility etc. of the employees concerned should be taken into consideration over a series of years wherever possible and judgment should be formed after carefully considering reports of a least three different superior officers wherever possible.

B. The principles referred to in A above shall not apply in the case of promotions to key posts as Head of Departments and selection posts where relative merits of eligible officers as assessed in accordance with A(a) and (c) above shall have preference over seniority. The Board's discretion in the matter of filling vacancies of key posts and selection posts shall be absolute."

21. Clauses A(a) and A(c) of the Regulation 22 refer to various factors to judge the ability or fitness of the person concerned for departmental promotion. However, what is material for our purpose is clause A(b) of Regulation 22, which states that the senior should not be passed over by the junior unless the latter possesses exceptional ability or qualifications. The principle of seniority-cum-fitness enumerated in Regulation 22 can thus be departed from in departmental promotion only in cases of exceptional ability or qualifications as provided for in the aforesaid clause A(b) of Regulation 22. If for departing from the rule of seniority-cum-fitness exceptional ability or qualifications in the criteria, then in adjudging deserving cases for whom the relaxation of the eligibility criteria itself can be recommended by the Competent Selection Committee under Regulation 21, the cases must be of exceptional and outstanding merit. At any rate, the relaxation of the qualifications cannot be recommended by the Competent Selection Committee and its recommendations accepted by the Competent Authority in a mechanical manner without application of mind.

22. Bearing these provisions in mind as interpreted by us in the above manner, we consider the recommendation of the Competent Selection Committee for relaxation of the qualifications of the respondents 3 to 29 in the instant writ petition. The relevant observations of the Competent Selection Committee extracted from its meetings of January 19, 1982 and January 21, 1982 held for selections of Assistant Shift Engineers for departmental promotion to the post of Assistant Superintendent are reproduced below :

"The Committee observed that most of the selected candidates do not fulfill the condition of experience prescribed for the post of Assistant Superintendent but decided to select them subject to relaxation of the said conditions in their favour by the Competent Authority."

23. The above observations of the Selection Committee clearly show its non-application of mind to the question of relaxation as contemplated by Regulation 21 referred to above. It is material to reiterate that when the recruitment rule prescribed for promotion to the post of the Assistant Superintendent requires longer experience of 10 years for the diploma-holders, as compared to six years for the degree-holders, the said prescription of minimum qualification under the Recruitment Regulations would have no meaning if the condition of experience were to be mechanically relaxed as the only principle then will be of seniority-cum-fitness for departmental promotions to the post of the Assistant Superintendent from the amongst all the incumbents in the next belows cadre of the Assistant Shift Engineers on the basis of their seniority thus obliterating the above eligibility criteria laid down for their promotion to the higher post of the

Assistant Superintendent, which is not contemplated by the rules because if that was so, the Board would not have insisted upon the minimum qualifications for departmental promotions and would have merely prescribed the rule of seniority-cum-fitness for all those who are in the next below cadre from which the promotion is made to the post of the Assistant Superintendent.

24. The recommendation of the Selection Committee shows that most of the candidates selected by it do not possess the requisite experience as required by the recruitment rules. Further although in the cadre of the Assistant Shift Engineers there are many including the petitioners who possess the requisite qualifications, including the experience as prescribed by the recruitment rules, no reasons, are given by the Competent Selection Committee to show how the case of the Candidates who do not possess the requisite experience are deserving cases within the meaning of Regulation 21 so as to recommend relaxation of the said condition in their favour. On the other hand, the observations of the Competent Selection Committee extracted above are made in a very insipid manner when it is stated by it that the selection is made by it "subject to relaxation of the condition of experience in their favour by the Competent Authority."

25. There is thus total non-application of mind in the recommendation made by the competent Selection Committee for relaxation of the qualifications of the condition of experience in favour of the respondents 3 to 29 while selecting them for promotion to the post of the Assistant Superintendent as envisaged by Regulation 21 on the basis of which the Competent Authority was to act under Note 2 to Regulation 38 of the Recruitment Regulations. In fact, the Competent Selection Committee has abdicated its function in this regard although it is clear that the Competent Authority, under Note 2 to Regulation 38, can act only on the recommendation of the Competent Selection Committee under Regulation 21 of the Recruitment Regulations. That apart, even the Competent Authority also did not consciously consider the question of relaxation of qualification in the light of the requirement of Regulation 21 as it clear from its order that "the condition of experience is relaxed where necessary". The relaxation of qualification in favour of the respondents 3 to 29 in their promotion to the post of the Assistant Superintendent is, there, illegal, arbitrary and contrary to the requirements of Regulation 21.

26. The learned counsel for the Board has, however, relied upon two decisions of the Supreme Court on the question of relaxation of qualifications. They are Swaran Lata Vs. Union of India and Others, . We fail to see how these case are of any assistance to him in the facts and circumstances of the instant case. In the case of Ram Sarup cited supra, the question was whether after promotion to the higher post when the minimum experience in the lower post required for promotion to the higher post is put in the higher post the employee can be reverted on the ground that at the time of his promotion he did not possess the necessary minimum experience. It may be seen that in said case the promotion

was not under challenge by the eligible candidate immediately after it was made and, therefore, the ratio of the said decision is not applicable in the facts of the instant case. Moreover, the above decision is not a decision on the power of relaxation. In the latter case of Smt. Swaran Lata cited supra, there were no rules and the Public Service Commission had reserved to it the power to relax the qualifications in suitable cases, which power was ratified by the Government. The advertisement in the said case contained the above relaxation clause. It was, therefore, held in the above case that the fundamental right of the appellant in the said case under Article 16 was not violated, particularly when she had taken a chance of applying for the post knowing full well that the Public Service Commission had power to relax the qualification as contained in the advertisement. The above case has, therefore, no application to the fact of the instant case which is governed by the statutory Recruitment Regulations framed by the Board.

27. It may be seen that persons enter service with certain hopes and aspirations about their future prospects in their career on the basis of their qualifications and, therefore, the prospects of their promotion in higher posts when they satisfy the requisite qualifications for the promotional posts cannot just be thwarted by making promotions of less qualified employees by relaxation of their qualifications mechanically without application of mind in which case the prescribed of the minimum qualification also would become meaningless and redundant. In *Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others*, , the Supreme Court has observed while saving the validity of the rule about the power of relaxation of any rule or regulation relating to the conditions of service that the Government must be satisfied not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship in which case the iniquitous conscience thereof can be relieved against by relaxation of the concerned Rule or Regulation. It is true that in the said case the provision conferring the power of relaxation expressly provided that a rule or a regulation should be relaxed if rule or regulation causes undue hardship in any particular case or if it is necessary to promote the dealing with the case in a just and equitable manner. However, in our view, the above guidelines incorporated in the rule about relaxation are of general application and need to be borne in mind in exercising the power of relaxation of any rule including the rule relating to the relaxation of the qualification.

28. It is clear in the instant case that each individual case for relaxation must be considered on its own merits and there cannot be any mechanical relaxation as is done in the present case. The language of Regulation 21 itself gives a guideline that the relaxation of the qualification can be made in "deserving cases" which, as stated above, would mean that the persons concerned have exceptional ability or merit, because otherwise, the Recruitment Regulation itself would be rendered meaningless and superfluous if as a matter of course the qualification etc. under the Recruitment Regulations are relaxed in which case the rule of promotion will

be altered to a simple rule of seniority-cum-fitness which is not what is intended by the Recruitment Regulations in Schedule A-6 relating to appointment/promotion in the post of the Assistant Superintendent. Be that as it may, there cannot be any relaxation of the requirement relating to the minimum experience as pointed out by us in the earlier paras.

29. For all these reasons, the impugned order of promotions of the respondent 3 to 29 dated February 9, 1982 promoting them to the post of Assistant Superintendent deserves to be quashed. However, it is not necessary to do so because the petitioners were also later on promoted to the post of the Assistant Superintendent and also because the deficiency in the minimum experience at the time of the promotions of the respondents 3 to 29 now stands fulfilled or regularised after their promotion as shown in the earlier paras. The only thing which it is necessary to do is to give a deemed deficiency in the minimum experience at the time of the promotions of the respondents 3 to 29 now stands fulfilled or regularised after their promotion as shown in the earlier paras. The only thing which it is necessary to do is to give a deemed deficiency in the minimum experience at the time of the promotions of the respondents 3 to 29 now stands fulfilled or regularised after their promotion as shown in the earlier paras. The only thing which it is necessary to do is to give a deemed date of promotion to the petitioners by treating their promotions in the posts of the Assistant Superintendents as on February 9, 1982 and by assigning them seniority above the respondents 3 to 29 in the said posts. The petitioners would be entitled to all the benefits of the posts of the Assistant Superintendent, including the arrears, if any, from February 9, 1982 till the date they were actually promoted to the said posts.

30. In the result, the instant writ petition is allowed. Without disturbing the promotions of the respondents 3 to 29 in the posts of the Assistant Superintendent as per the impugned order dated February 9, 1982 it is directed that the petitioners, who are also later on promoted to the posts of Assistant Superintendent, should be given deemed dates of promotion from February 9, 1982 in the said post, if necessary by creating supernumerary posts for them from February 9, 1982 till they were actually promoted in the said posts and should be assigned seniority in the said posts over the respondents 3 to 29. It is further directed that the petitioners should be given all the benefits including arrears of salary etc. of the posts of Assistant Superintendent from their deemed date of promotion i.e. February 9, 1982 till the dates they were actually promoted in the said post. Rule made absolute in the above terms. No costs.